IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9295 OF 2004

Shri Damodhar Laxman Kachare & Anr. .. Petitioners.

V/s.

Shri Janardan Rajaram Kachare .. Respondent.

Mr. Prafull B.Shah for the Petitioners.

Mr. Navnath R. Patil for the Respondent.

CORAM : R.M. SAVANT, J.

DATED : 04th JUNE, 2007.

P.C.:

. Rule. Rule, with the consent of the parties is made returnable forthwith and heard finally.

2. This petition takes exception to the order dated 23rd of March, 2004, by which order the revision filed by the petitioner came to be dismissed by the Additional Commissioner, Pune Division, Pune.

3. The dispute in question is as regards mutation entry No. 417 of village Jambud, Tal. Malshiras. The said mutation entry was effected by the concerned Aval Karkoon Malshiras on 06.06.1979 in favour of the petitioner. The said entry was challenged by the

respondent herein by filing an appeal before the Sub Divisional Officer. By order dated 05.10.1996, the S.D.O. dismissed the appeal. Being aggrieved by the said order of the S.D.O., the Respondent herein filed a second appeal, which came to be allowed by order dated 31.01.2002 passed by the Addl.Collector, Solapur.

4. Being aggrieved by the said order passed by the Addl. Collector, the petitioner herein filed a revision before the Additional Commissioner, Pune Division, Pune, which revision came to be dismissed by the order dated 23.03.2004. It is this order, which is impugned in the present petition.

5. I have heard the learned counsel for the petitioner and the learned counsel for the respondent. It is contended on behalf of the petitioner that the appeal filed in the year 1986 was not maintainable in view of the fact that the same was filed beyond the period of limitation prescribed under the Maharashtra Land Revenue Code. The said issue was specifically raised by the petitioner in the revision filed before the Additional Collector. But without even adverting to the said fact or dealing with the same, the Revision filed by the petitioner came to be dismissed. It is, therefore, contended by Shri Shah that the Revision

deserves to be remanded back to the Revisional Authority.

6. On the other hand it is contended on behalf of the Respondent that since the mutation entry was effected on the basis of an unregistered document, the same was impermissible and since the said issue goes to the root of the matter, therefore, the delay if any is inconsequential.

7. To this submission made on behalf of the respondent, Shri Shah contends that the mutation entry has been effected pursuant to the partition that has taken place between the family members. Be that as it may, reading of the impugned order makes it absolutely clear that the Revisional Authority has not dealt with the issue of delay in filing of the appeal and has proceeded to deal with the matter on merits. I, therefore, find considerable merit in the submission made by Shri Shah, the learned counsel for the petitioner that the Revision deserves to be remanded back for taking a decision afresh.

8. In that view of the matter, the petition will have to be allowed. Impugned order dated 23.03.2004 will have to be set aside and the matter would have to

be remanded back to the Revisional Authority for a decision afresh and for considering all the issues raised by the petitioner in the said revision including the issue of limitation. On such remand, the Revisional Authority will decide the revision within a period of three months from the date. All the contentions of the parties are explicitly kept open.

9. Rule is accordingly made absolute. Parties to bear their own costs.

(R.M.SAVANT,J.)

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